UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 22308

CALVIN WINSTON JACKSON,

Appellant,

vs.

LEWIS NELSON, Warden,
LIEUTENANT ROGER, and
MR. POWELL, San Quentin Prison,

Appellees.

APPELLEE'S BRIEF

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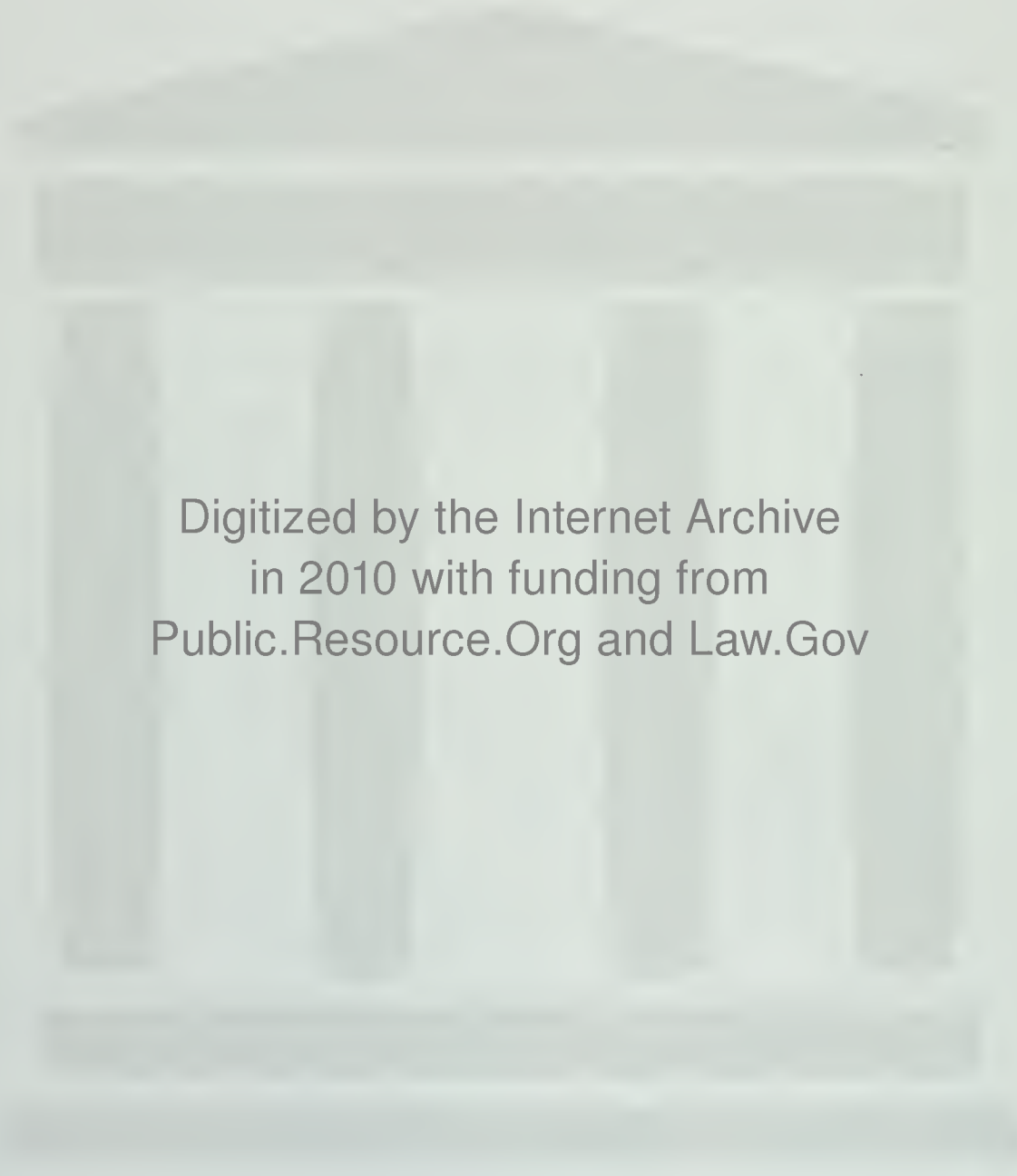

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CALVIN WINSTON JACKSON, Appellant, vs. LEWIS NELSON, Warden, LIEUTENANT ROGER, and MR. POWELL, San Quentin Prison, Appellees.	No. 22308

APPELLEE'S BRIEF

JURISDICTION

The jurisdiction of the United States District Court to entertain appellant's civil action under Title 42, United States Code, section 1983, was conferred by Title 28, United States Code section 1343(3). The jurisdiction of this Court is conferred by Title 28, United States Code section 1291.

STATEMENT OF THE CASE

Appellant, an inmate confined in the California State Prison at San Quentin, initiated an action under the Federal Civil Rights Act, 42 U.S.C. 1983, seeking injunctive relief against the above-named defendants. The gist of appellant's complaint was that he was a victim of a conspiracy on the part of the defendants to deny him constitutional rights of access to the courts. In furtherance of this conspiracy, appellant alleged that defendants withdrew his privilege card, thereby

denying him access to the library so that he could prepare legal documents in civil and criminal matters of which he had an interest. The specific act alleged was that on June 5, 1967, defendants called appellant to disciplinary hearing, took away his privilege card because he on that same date had filed a petition for a writ of certiorari with the Supreme Court of the United States (TR 7).

On August 21, 1967, appellees filed a motion to dismiss pursuant to Rules 12(b) and 56(b) of the Federal Rules of Civil Procedure on the ground that the complaint failed to state a claim against appellees upon which relief could be granted and on the ground that the complaint was sham and frivolous. (TR 27, 28). Exhibit I, attached to appellee's motion was a certified copy of the Report of Violation of Institutional Rules which detailed the activity of appellant that occurred on June 2, 1967, and which resulted in the disciplinary action. The report recites that appellant refused to work as ordered and also discloses his general attitude toward prison management. The disciplinary report further indicated that appellant actually plead guilty to the charge. This plea of guilty by appellant directly controverts assertions made by appellant in his complaint wherein he stated that he was willing to work but that a job was denied him for no reason. (TR 33).

On August 30, 1967, appellant filed a Notice of Motion to Deny Defendant's Motion to Dismiss and Motion for an Extension of Time and Employment of Counsel (TR 106). On

September 7, 1967, appellant filed an amended complaint and sought relief pursuant to the Fourteenth Amendment to the Constitution of the United States wherein he alleged that he is entitled to release from San Quentin State Prison as long as this instant civil complaint is pending before the court or where any legal petition or proceeding of any nature is pending before any state or federal court. (TR 119).

In an order filed on September 20, 1967, after consideration of the complaint, the Notice of Motion and Memorandum of Points and Authorities submitted by appellees, and other documents and papers submitted to the court by appellant, the court granted appellees' motion and dismissed the action on the ground that the complaint did not state a cause of action against appellees. (TR 123).

SUMMARY OF APPELLANT'S ARGUMENT

The District Court improperly dismissed the complaint.

SUMMARY OF APPELLEE'S ARGUMENT

I. The District Court properly dismissed the complaint as it failed to state a claim against appellees upon which relief can be granted.

II. The dismissal of the complaint is tantamount to an order for summary judgment against appellant.

III. The dismissal of the complaint and amended complaint was proper under Rule 5(a), Federal Rules of Civil Procedure.

IV. Dismissal of a case was proper under Title 28, U.S.C.A. section 1915(d).

ARGUMENT

I

THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT AS IT FAILED TO STATE A CLAIM AGAINST APPELLEES UPON WHICH RELIEF CAN BE GRANTED.

Appellant's complaint that the appellees herein withdrew his privilege card which, among other things, terminated his library privileges does no more than place in issue matters that relate solely to prison management and discipline and consequently does not state a federal issue.

The courts will not interfere in matters of prison administration. Prisoners must endure the inconveniences normally inherent in the orderly operation of a prison. Appellees are under no constitutional obligation to provide law books to prisoners for their use in either civil or criminal litigation in which they may be a party plaintiff or party defendant. Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961), cert. denied, 368 U.S. 862 (1961).

In Roberts v. Peppersack, 256 F.Supp. 415, 433-34 (D. Md. 1966), the court made the following observations:

> "The right to petition or correspond with a court does not include a right to be furnished with an extensive collection of legal material. Such a collection either in one's own cell or in the prison library will encourage 'fishing expeditions' in which an inmate seeks out cases where the allegation received favorable consideration

and adopts these allegations as his own . . .

"Prisons are not intended, nor should they be permitted, to serve the purpose of providing inmates with information about methods of securing release therefrom . . ." 256 F.Supp at 433.

In Wagner v. Ragan, 213 F.2d 294 (C.A. 7th Cir. 1954), the court held that a prisoner in a state penitentiary has no right to maintain an action in the federal district court against a warden, alleging that the warden had deprived him of certain rights under the Civil Rights Act, since federal courts do not have the power to control or regulate the ordinary internal management and discipline in prisons operated by the state. Also see Mayberry v. Prasse, 225 F.Supp. 752 (D. Pa. 1963); Walker v. Pate, 356 F.Rptr.2d 502 (7th Cir. 1956).

II

THE DISMISSAL OF THE COMPLAINT IS TANTAMOUNT TO AN ORDER FOR SUMMARY JUDGMENT AGAINST APPELLANT.

Appellant's complaint that the appellees herein withdrew his privilege card because he filed a writ of certiorari with a federal court was challenged and proven untrue in appellee's Motion to Dismiss and Motion for Summary Judgment. The Report of Violation of Institutional Rules filed as Exhibit I with the hereinabove named motions clearly disclosed that disciplinary action was taken against appellant for the following reasons:

"Inmate Jackson, B-852, came to this office today after having been assigned to the Cotton

Textile Mill by the Assignment Lieutenant. The Inmate was interviewed by the Writer and during the interview the Inmate stated that he doesn't have time to be bothered with working at the Cotton Mill or any other industries. Jackson further stated he goes to school four hours at night and fights his case all day; he calls the Mill a mad house; says that Custody is causing forced labor, and that he has two civil complaints in now on the Warden and is willing to write more. Jackson was further counselled but to no avail since he still refused to work in the Mill.

"The Inmate was told that this report would be written and passed to the Yard pending its disposition.

"The Industries' Gate Officer was notified of this report and action." (TR 33).

The report further discloses that on June 5, 1967, appellant entered a plea of guilty to said charges claiming that he is fully scheduled going to school at night and "fighting his case in the day time." (TR 33).

Rule 12(b), Federal Rules of Civil Procedure provides in part as follows:

"Every defense, in law or fact, to a claim for relief in any pleading, . . ., shall be asserted in the responsive pleading thereto if one is required, except that the following defenses

> may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, . . ., (6) failure to state a claim upon which relief can be granted . . . If, on a motion asserting the defense numbered (6) to dismiss for failure of a pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 . . . ."

As demonstrated hereinabove in the instant case, matters outside the pleadings were presented to and not excluded by the District Court, proving the complaint to be sham and frivolous and representing an attempt by appellant to harass appellees. Appellees submit therefore that the dismissal of the complaint by the District Court is tantamount to an order for summary judgment against appellant since no "genuine" issue remained for the trier of the facts. See Suckow Borax Mines Consol. v. Borax Consolidated, 185 F.2d 196, 205 (9th Cir. 1950); Koepke v. Fontecchio, 177 F.2d 125, 127 (9th Cir. 1949); Rule 56, Federal Rules of Civil Procedure.

III

THE DISMISSAL OF THE COMPLAINT AND AMENDED COMPLAINT WAS PROPER UNDER RULE 5(a), FEDERAL RULES OF CIVIL PROCEDURE.

The Civil Rights Act is Not a Substitute for Habeas Corpus.

Rule 5(a), Federal Rules of Civil Procedure requires in part:

> "Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint . . . shall be served upon each of the parties."

In appellant's amended complaint he directly seeks release from his confinement in the California State Prison at San Quentin. In part appellant states as grounds for relief certain alleged action taken by the California Adult Authority. The record on appeal clearly demonstrates that appellant did not follow the mandatory and jurisdictional requirements of Rule 5(a) with regard to the Adult Authority or the Department of Corrections.

Furthermore, it should be noted that appellant, in placing in issue the action of the Adult Authority retaining him in prison, seeks to attack the legality of his confinement. Accordingly, his actions should be in habeas corpus, not under the Civil Rights Act to circumvent habeas corpus requirements. DeWitt v. Pail, 366 F.2d 682, 686 (9th Cir. 1966). For this reason too the District Court properly dismissed appellant's amended complaint.

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IV

DISMISSAL OF A CASE WAS PROPER UNDER TITLE 28, U.S.C.A. SECTION 1915(d).

Appellant in his complaint states in part:

"Plaintiff hereby seeks to invoke immediate jurisdiction of this honorable court to contest the constitutionality of certain (hereinafter specified) administrative authority and discriminatory practice, by virtue of which the above named defendants have seize, impound, confiscate, and distroy the personal privileges of plaintiff -- which are essential and vitally necessary for the defense and prosecution of certain legal proceedings presently pending within three United States courts, of which plaintiff is the principle party of interest and is constrained to litigate and prosecute in propria persona . . ." [sic] (Emphases by appellant.)

Section 1915 provides that any court of the United States may dismiss a case if it is satisfied that the action is frivolous or malicious. This Court in the exercise of its plenary power may dismiss a civil appeal in forma pauperis as frivolous. United States ex rel. Gardner v. Madden, 352 F.2d 792 (9th Cir. 1965). Also see Weaver v. Pate, 326 F.2d 353 (7th Cir. 1963), cert. denied, 84 S.Ct. 795, 376 U.S. 939.

As demonstrated hereinabove, appellant did not favor the District Court with a description of the alleged cases or

defendants he is prosecuting nor the cases in which he is a defendant in the federal courts. On the contrary, Exhibit I of appellee's Motion to Dismiss and Motion for Summary Judgment supports the inference that appellant's complaint and amended complaint are nothing but frivolous and malicious attempts on the part of appellant to harass and undermine prison management. (TR 33).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the District Court dismissing appellant's complaint should be affirmed.

DATED: January 11, 1968

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CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit and that in my opinion this brief is in full compliance with these rules.

DATED: January 11, 1968

Jerome C. Utz

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